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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 MARK GELAZELA,  
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13                                      Petitioner,  
14                      v.  
15 DOUGLAS WHITE,  
16                                      Respondent.  
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Case No. 1:21-cv-00002-HBK

FINDINGS AND RECOMMENDATIONS TO  
DISMISS PETITION FOR FAILURE TO  
STATE COGNIZABLE CLAIMS AND  
FAILURE TO EXHAUST CLAIMS<sup>1</sup>

OBJECTIONS DUE IN THIRTY DAYS

(Doc. No. 1)

ORDER DIRECTING CLERK OF COURT TO  
ASSIGN CASE TO DISTRICT JUDGE AND  
PROVIDE PETITIONER BIVENS CIVIL  
RIGHTS COMPLAINT FORM

21            Petitioner Mark Gelazela, a federal prisoner, has pending a *pro se* petition for writ of  
22 habeas corpus under 28 U.S.C. § 2241. (Doc. No. 1). The petition is before the court for  
23 preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the  
24 judge assigned to the habeas proceeding must examine the habeas petition and order a response to  
25 the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v.*  
26 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th

27  
28 <sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302  
(E.D. Cal. 2019).

1 Cir. 1998). Courts have “an active role in summarily disposing of facially defective habeas  
2 petitions” under Rule 4. *Ross v. Williams*, 896 F.3d 958, 968 (9th Cir. 2018) (citation omitted).

### 3 **I. BACKGROUND**

4 Petitioner initiated this case on January 4, 2021 by filing the instant petition while  
5 incarcerated at Federal Correctional Institution, Mendota Camp, which is within the venue and  
6 jurisdiction of this court. (Doc. No. 1). Petitioner designates his petition an “Emergency.”<sup>2</sup> (*Id.*  
7 at 1). Petitioner is serving a 41-month prison sentence for his September 15, 2016 conviction,  
8 after a jury trial, for wire fraud entered by the U.S. District Court for the Central District of  
9 California. (*Id.* at 2). The gravamen of his petition is that the conditions of petitioner’s  
10 confinement are unconstitutional. (*See generally id.*) Specifically, in Ground One, petitioner  
11 alleges the Bureau of Prisons (“BOP”) is denying him “emergency, critical medical care”<sup>3</sup> for his  
12 injured knee. (*Id.* at 9-10). In Ground Two, petitioner claims he is being subjected to  
13 “unconstitutional imprisonment conditions” stemming from the FCI Medota’s failure to follow  
14 the Center for Disease Control’s COVID-19 safety protocols. (*Id.* at 11-12). As relief, petitioner  
15 seeks release to home confinement for the alleged unconstitutional conditions of his confinement  
16 under the Coronavirus Aid Relief and Economic Security (“CARES”) Act and the First Step Act.  
17 (*Id.* at 13).

### 18 **II. APPLICABLE LAW AND ANALYSIS**

#### 19 **a. Non-Cognizable Claims**

##### 20 **i. Conditions of Confinement Claims**

21 The Supreme Court, while not foreclosing habeas relief for a conditions of confinement  
22 claim, to date, has refused to recognize it as a proper vehicle to obtain such relief. *Bell v. Wolfish*,  
23 441 U.S. 520, 526 n. 6 (1979) (“thus, we leave to another day the question of the propriety of  
24 using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from  
25 the fact or length of the confinement itself.”). Instead, claims centered on conditions of a federal

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26 <sup>2</sup> The court reviewed the petition upon receipt and determined it did not warrant emergency handling.

27 <sup>3</sup> Because the petition contained allegations of imminent physical harm, the court directed the  
28 clerk to provide a copy of petitioner’s petition to officials at FCI Medota, for handling as they  
deemed appropriate. (*See* Doc. No. 10).

1 prisoner's confinement are appropriately pursued in a *Bivens* civil rights action—not a habeas  
2 action. See *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) (recognizing a  
3 cause of action against the federal government for civil rights violations). The Supreme Court  
4 made clear that a claim is cognizable on federal habeas corpus review when a prisoner challenges  
5 “the fact or duration of his confinement” and “seeks either immediate release from that  
6 confinement or the shortening of its duration.” See *Preiser v. Rodriguez*, 411 U.S. 475, 489  
7 (1973). In contrast, claims stemming from the conditions of confinement should be brought in a  
8 civil rights action. *Id.* at 484-86; see also *Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016)  
9 (citing *Crawford v. Bell*, 599 F.2d 890, 891-92 (9th Cir. 1979)) (explaining that the Ninth Circuit  
10 has “long held that prisoners may not challenge mere conditions of confinement  
11 in habeas corpus”); *Badea v. Cox*, 931 F.3d 573, 574 (9th Cir. 1991) (“A civil rights action . . . is  
12 the proper method of challenging conditions of confinement.”).

13 Thus, the undersigned finds release under § 2241 unavailing for the alleged constitutional  
14 violations predicated upon petitioner's alleged conditions of confinement. See *Shook v. Apker*,  
15 472 F. App'x. 702, 702-03 (9th Cir. 2012) (holding that district court did not err in treating  
16 conditions of confinement claims as arising under *Bivens*, rather than § 2241); *Alcala v. Rios*, 434  
17 F. App'x 668, 669-70 (9th Cir. 2011) (holding that district court did not err in finding that  
18 conditions of confinement claims are not cognizable under § 2241).

19 Further, although a court may convert a habeas petition to a civil rights complaint, the  
20 undersigned does not find recharacterization proper in this case. “If the complaint is amenable to  
21 conversion on its face, meaning that it names the correct defendants and seeks the correct relief,  
22 the court may recharacterize the petition . . .” *Nettles*, 830 F.3d at 936 (quoting *Glaus v.*  
23 *Anderson*, 408 F.3d 382, 388 (7th Cir. 2005)). Petitioner here names only the warden as the sole  
24 respondent; petitioner does not name the people who allegedly committed the affirmative acts or  
25 omissions that violated his rights. Moreover, petitioner does not seek relief that would be  
26 appropriate for a civil rights complaint, *i.e.*, money damages. See *Solida v. McKelvey*, 820 F.3d  
27 1090, 1094, 1093 (9th Cir. 2016) (“[M]oney damages is the remedy under *Bivens*,” and *Bivens*  
28 “does not encompass injunctive and declaratory relief where . . . the equitable relief sought

requires official government action.”). As a courtesy, the court will direct the clerk of court to provide petitioner with a civil rights complaint form should he wish to pursue a *Bivens* claim in a separate, properly filed action.

## **ii. Request for Home Confinement**

Finally, to the extent petitioner seeks early release to home confinement under the First Step Act, the CARES Act, or compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), these claims are not cognizable on federal habeas review. The First Step Act directs BOP to “ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term . . . under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community,” including, to the extent practicable, home confinement. 18 U.S.C. § 3624(c)(1)-(2). BOP is given discretion over an inmate’s location of confinement. *See Reeb v. Thomas*, 636 F.3d 1224, 1227 (9th Cir. 2011). The Ninth Circuit has held that this discretion may not be challenged via a § 2241 petition. *Id.*; *see also Mohsen v. Graber*, 583 F. App’x 841, 842 (9th Cir. 2014) (holding a district court lacked jurisdiction to consider a First Step Act claim in a § 2241 petition); *Cruz v. Jenkins*, No. 20-CV-03891-LHK, 2020 U.S. Dist. LEXIS 218205, at \*6 (N.D. Cal. 2020) ([The First Step Act] gives the BOP discretion over the location of confinement, and the Ninth Circuit has repeatedly held that this discretion may not be challenged via a Section 2241 petition). Accordingly, petitioner’s First Step Act claim should be dismissed.

For that same reason, this court cannot grant federal habeas relief based on the CARES Act. The CARES Act allows BOP to “lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under [18 U.S.C. § 3624(c)(2)], as the Director determines appropriate.” CARES Act, Pub. L. No. 116-136, § 12003(b)(2) (2020). Thus, BOP’s determination as to the amount of time in which an inmate is placed in home confinement is under BOP’s discretion and outside the scope of a § 2241 petition. *See Cruz v. Jenkins*, No. 20-CV-03891-LHK, 2020 U.S. Dist. LEXIS 218205, at \*5-9 (C.D. Cal. Nov. 20, 2020).

1 To the extent Petitioner seeks compassionate release pursuant to 18 U.S.C. §  
2 3582(c)(1)(A), such a motion must be brought before the petitioner’s sentencing court—here the  
3 U.S. District Court for the Central District of California. (*See* Doc. No. 1 at 2); 18 U.S.C.  
4 § 3582(c)(1)(A); *Bolden v. Ponce*, No. 2:20-cv-03870-JFW-MAA, 2020 U.S. Dist. LEXIS 77249,  
5 at \*2 (C.D. Cal. May 1, 2020) (explaining that “[o]nly the original sentencing court can entertain”  
6 requests for compassionate release under 18 U.S.C. § 3582(c)(1)(A) and that a habeas petitioner  
7 “may not short-circuit this requirement to file in the sentencing district by petitioning for such  
8 relief pursuant to Section 2241 in the custodial district”); *see also United States v. Ono*, 72 F.3d  
9 101, 102 (9th Cir. 1995) (explaining that a motion under § 3582(c) “is undoubtedly a step in the  
10 criminal case” that “requires the [sentencing] court to reexamine the original sentence”).  
11 Therefore, none of petitioner’s claims seeking release to home confinement are cognizable on  
12 federal habeas review and these claims should be dismissed.

13 **b. Failure to Exhaust Claims**

14 Alternatively, the court may dismiss the petition because none of the claims appear to  
15 have been exhausted. Federal courts “require as a prudential matter that habeas petitioners  
16 exhaust available judicial and administrative remedies before seeking relief under § 2241.”  
17 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on another ground  
18 by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The BOP has established a multi-level  
19 review process for administrative grievances. *See* 28 C.F.R. §§ 542.10-542.16. First, “[i]nmates  
20 shall informally present their complaints to staff, and staff shall attempt to informally resolve any  
21 issue before an inmate files a Request for Administrative Remedy.” *Id.* at § 542.13(a).  
22 Second, “an inmate who is not satisfied with the Warden’s response [to the informal complaint]  
23 may submit an Appeal . . . to the appropriate Regional Director. . .” *Id.*, at § 542.15(a). Third,  
24 “an inmate who is not satisfied with the Regional Director’s response may submit an Appeal . . .  
25 to the General Counsel. . . . Appeal to the General Counsel is the final administrative appeal.” *Id.*

26 Although petitioner states that he has raised his complaint to the second level of  
27 administrative appeal (Doc. No. 1 at 3) the petition and documents attached to the petition  
28 indicate otherwise. Petitioner admits that both his administrative grievances were submitted only

1 to the warden, meaning that both grievances were first level attempts to informally resolve his  
2 claims with prison staff. (*Id.*); see 28 C.F.R. § 542.13(a). Moreover, petitioner submits copies of  
3 two grievance forms titled “Inmate Request to Staff,” both of which were submitted to the warden  
4 to informally resolve his complaints. (Doc. No. 1 at 17, 25). Accordingly, the record reflects  
5 petitioner has neither submitted an appeal to BOP’s regional director, nor BOP’s general counsel,  
6 as required to exhaust his administrative remedies. Therefore, even if any of the claims were  
7 cognizable, not conceded, the claims nonetheless would be subject to dismissal as unexhausted.

8 Accordingly, it is **ORDERED**:

- 9 1. The Clerk of Court is directed to assign this case to a district judge.
- 10 2. The Clerk of Court is directed to provide petitioner with a blank civil rights complaint  
11 form.


12 Further, it is **RECOMMENDED** that the petition (Doc. No. 1) be **DISMISSED**.

#### 13 NOTICE TO PARTIES

14 These findings and recommendations will be submitted to the United States district judge  
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
16 days after being served with these findings and recommendations, a party may file written  
17 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
18 Findings and Recommendations.” Parties are advised that failure to file objections within the  
19 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
20 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21  
22 IT IS SO ORDERED.

23 Dated: May 26, 2021

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25 HELENA M. BARCH-KUCHTA  
26 UNITED STATES MAGISTRATE JUDGE  
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